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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/453,340	12/02/1999	BRADLEY CAIN	2204/179	2520
34845	7590	03/16/2005	EXAMINER	
STEUBING AND MCGUINNESS & MANARAS LLP 125 NAGOG PARK ACTON, MA 01720				WILSON, ROBERT W
		ART UNIT		PAPER NUMBER
		2661		

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/453,340	CAIN ET AL.	
	Examiner Robert W Wilson	Art Unit 2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 April 2004.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4,7-11,14-18,21 and 22 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 1-4,7-11,14-18 and 21 is/are allowed.

6) Claim(s) 22 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

<p>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.</p>	<p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____.</p>
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***Claim Rejections - 35 USC § 102***

1.0 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2.0 Claim 22 is rejected under 35 U.S.C. 102(e) as being anticipated by Berl (U.S. Patent No.: 5,991,302).

Referring to claim 22, Berl teaches: Packet (message) is forwarded from APPN (1<sup>st</sup> protocol) to DLSW (2<sup>nd</sup> protocol) per col. 9 lines 6-21 (Method)

DLSW (2<sup>nd</sup> protocol) receives packet (message) from APPN (first protocol) per col. 9 lines 6-21 or per Fig 7 (Receiving the message)

APPN (1<sup>st</sup> protocol) sends a data request via the API to the DLSW (2<sup>nd</sup> protocol) which causes DLSW (2<sup>nd</sup> protocol) to be invoked and determines which packet is to be loaded into Queue (725) per Fig 7 or per col. 9 lines 6-21.

Next the packet is forwarded from APPN (1<sup>st</sup> protocol) queue to the DLSW (2<sup>nd</sup> protocol) queue per Fig 7 or per col. 9 lines 6-21.

***Allowable Subject Matter***

3.0 The present invention is directed to a first protocol (upper layer protocol) with a priority function between the first protocol (upper layer) and the 2<sup>nd</sup> protocol (lower layer). The priority function is called or invoked associated with the 2<sup>nd</sup> protocol (lower layer) and a message is sent from the second protocol (lower layer) to the first protocol (upper layer)

The closest prior art is Berl et. al. (U.S. Patent No.: 5,940,390). Berl discloses APPN (1<sup>st</sup> protocol) with an API which is used to communicate with DLSW (2<sup>nd</sup> protocol) via a data request message which contains priority of the packet associated with APPN (1<sup>st</sup> protocol). APPN (1<sup>st</sup> protocol) inserts the packet into queues based upon priority and next sends a data request which is received by DLSW which invokes a decision as to which packet should be downloaded into the DLSW queue.

The closest prior art Berl et. al. (U.S. Patent No.: 5,991,302) does not disclose or anticipate or render obvious the following claim limitations:

“forwarding the message along with an indication of the priority level for the message from the second protocol to the first protocol” as claimed in Claim 1.

“wherein the second protocol is operably coupled to forward the message to the first protocol along with an indication of the priority level for the message” as claimed in Claim 8.

“wherein the second protocol is programmed to forward the message to the first protocol along with an indication of the priority level for the message” as claimed in Claim 15.

In Addition:

Claims 2-4 & 7 would be allowable because they depend upon claim 1.

Claims 9-11 & 14 would be allowable because they depend upon claim 8.

Claims 16-18 & 21 would be allowable because they depend upon claim 15.

***Response to Amendment***

4.0 Applicant's arguments with respect to claims 1-4, 7-11, 14-18, & 21-22 have been considered but are moot in view of the new ground(s) of rejection. Refer to the above rejection for details.

***Conclusion***

5.0 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W Wilson whose telephone number is 571/272-3075. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 571/272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Robert W. Wilson*  
Robert W Wilson  
Examiner  
Art Unit 2661

RWW  
2/23/05

*Chau T. Nguyen*  
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SUPERVISORY PATENT EXAMINER  
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